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6 JCI METAL PRODUCTS

FILED

09 SEP 30 AM 10:01

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DEPUTY

7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JCI METAL PRODUCTS,

11 Plaintiff,

12 v.

13 UNITED STATES DEPARTMENT OF THE  
14 NAVY,

15 Defendant.  
16

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF  
("REVERSE" FOIA)**

'09 CV 2139 IEG AJB

17 **I.**

18 **INTRODUCTION**

19 1. Plaintiff JCI METAL PRODUCTS ("JCI"), sues for temporary and permanent  
20 injunctive and declaratory relief enjoying the Defendant UNITED STATES DEPARTMENT OF  
21 THE NAVY (the "Navy") from releasing or disseminating certain pricing information contained in  
22 an awarded contract, the N00244-02-D-0026 ("Contract"), to a competitor in response to the  
23 competitor's request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. For the  
24 reasons stated herein, the release of specified portions of that contract are exempt from disclosure  
25 under FOIA because they constitute "trade secrets and commercial or financial information obtained  
26 from a person and privileged or confidential" under 5 U.S.C. § 552(b)(4) and disclosure of that  
27 information would violate the Trade Secrets Act, 18 U.S.C. § 1905.

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## **JURISDICTION AND VENUE**

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## PARTIES

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IV.

FACTS

A. The Contract

6. In June 2002, the Navy awarded JCI Contract N00244-02-D-0026, pursuant to which JCI performed various Navy shipboard repairs in San Diego. JCI has been performing repair work for the Navy for over 24 years on other contracts throughout the Pacific and East Coast.

7. Prior to the award of the Contract, JCI submitted a contract bid in response to the Navy's solicitation number N00244-02-R0023.

8. The proposal contained JCI's Contract Line Item Number ("CLIN") prices for specific tasks and materials.

9. JCI has treated and considered its CLINs to be confidential and proprietary material, and it has taken precautions to preserve that confidentiality.

10. The Contract is one of the several contracts for the Navy shipboard maintenance that have been submitted for competitive bidding to the Navy. JCI is one of the several private companies that seek to obtain contracts for such services.

11. If JCI's competitors knew or had access to the confidential and proprietary CLIN information in the Contract, they would gain an unfair competitive advantage over JCI in future contract competitions. This information, combined with publicly available information known by other bidders for contracts, would permit the competitors to calculate JCI's rates, overheads, profits and other sensitive pricing for similar items. The information also would allow JCI's commercial customers to bargain down prices more effectively.

12. The Contract expired in December 2007. Currently JCI is in the process of submission of a new bid for a new contract with the Navy for tasks very similar to those contained in Contract N00244-02-D-0026.

B. The Navy's Release of Information

13. On or about February 24, 2009, JCI received a letter from the Navy indicating that pursuant to a Freedom of Information Act ("FOIA") the Navy intended to release JCI's CLINs to JCI's competitor, Pacific Maritime Industries. The letter gave JCI until March 6, 2009, to submit

1 information that legally supports a determination that release of JCI's CLINs would cause substantial  
2 competitive harm and is therefore exempt from disclosure under the FOIA.

3 14. On or about March 5, 2009, counsel for JCI sent a letter to the Navy indicating that  
4 pursuant to *McDonnell Douglas Corporation v. United States Department of the Air Force*, 375  
5 F. 3d 1182 (2004) (the "*McDonnell* decision"), JCI's CLINs were within the scope of 5 U.S.C. §  
6 552(b)(4) ("exemption 4") and therefore should not be released by the Navy because it would cause a  
7 substantial competitive harm to JCI.

8 15. On or about March 6, 2009, the Navy responded to JCI indicating its intent to release  
9 JCI's CLINs since they do not contain breakouts for cost, profit, G&A, unburdened labor rates, or  
10 similar information covered by exemption 4. The March 6, 2009, letter gave JCI until March 13,  
11 2009, to provide the Navy with further legal support for non disclosure of JCI's CLINs. On or about  
12 March 13, 2009, counsel for JCI responded to the Navy stating the specific reasons why JCI's CLINs  
13 were within the scope of exemption 4.

14 16. Specifically providing that release of JCI's CLINs would allow JCI's competitors to  
15 deduce the percentage by which JCI marks up the bids it receives from subcontractors and provide  
16 competitors with JCI's bottom line prices. Many items in JCI's CLINs contain specific vendor  
17 discounts that JCI has been able to negotiate with the same vendors used by its competitors due to its  
18 individual relationship with a vendor. Furthermore, release of JCI's CLINs would enable JCI's  
19 competitors determine the structure of the pricing methods used by JCI and overall bid strategy of  
20 JCI as well as the structure of its pricing methods and underbid it on the subsequent contract.

21 17. On or about, September 18, 2009, the Navy responded to JCI's March 13, 2009 letter.  
22 The Navy indicated that its final administrative decision was to release JCI's CLINs and JCI had 10  
23 business days to file a complaint or seek a restraining order to prevent the Navy from releasing JCI's  
24 CLINs.

25 18. On or about, September 22, 2009, counsel for JCI communicated with the Navy to  
26 find out whether the Navy will hold off releasing the documents if JCI will file a lawsuit. On or  
27 about, September 23, 2009, the Navy responded stating that it intends to release JCI's CLINs on  
28 October 6, 2009, unless JCI properly files and serves injunctive action before that date.

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**REQUEST FOR RELIEF**

WHEREFORE, JCI requests judgment:

- a) Declaring the CLIN information at issue here is within the scope of Exemption Four of FOIA;
- b) Declaring that disclosure of the CLIN information at issue here would violate and contravene the Trade Secrets Act;
- c) Setting aside the Navy's decision to disclose the information at issue as arbitrary and capricious, an abuse of discretion, and not in accordance with law;
- d) Granting JCI's temporary and preliminary relief from disclosure of this information until this Court reaches a decision to enjoin the Navy permanently from disclosing the JCI's CLINs;
- e) Permanently enjoining the Navy, its officers, agents and employees from disclosing JCI's CLINs; and
- f) Granting such other and further relief as may be deemed just and proper.

DATED: September 30, 2009

Respectfully submitted,

**SCHWARTZ SEMERDJIAN HAILE  
BALLARD & CAULEY LLP**

By: 

Kevin T. Cauley, Esq.  
Attorneys for Plaintiff  
JCI METAL PRODUCTS

JS 44  
(Rev. 07/89)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JCI METAL PRODUCTS

**DEFENDANTS**

UNITED STATES DEPARTMENT OF THE NAVY

09 SEP 30 AM 10:01

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT \_\_\_\_\_

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Kevin T. Cauley, Esq. (#105082)  
Lana U. Sheshina, Esq. (#249219)  
Schwartz Semerdjian Haile Ballard & Cauley LLP  
101 West Broadway, Suite 810, San Diego, CA 92101  
(619) 236-8821

ATTORNEYS (IF KNOWN)

'09 CV 2139 IEG AJB

**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PT                         | DEF                        |   | PT                         | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motion to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions		

**VI. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removal from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify) \_\_\_\_\_  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

 CHECK YES only if demanded in complaint:  
 JURY DEMAND: ☐ YES ☒ NO
**VIII. RELATED CASE(S) IF ANY** (See instructions):

JUDGE \_\_\_\_\_

Docket Number \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 30, 2009

Kevin T. Cauley, Esq.



Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS005763  
Cashier ID: msweeney  
Transaction Date: 09/30/2009  
Payer Name: SCHWARTZ SEMERDJIAN

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CIVIL FILING FEE

For: JCI METAL V US DEPT OF NAVY  
Case/Party: D-CAS-3-09-CV-002139-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 26267  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.